

Remarks

After entry of the amendments herein, claims 1, 3-5, 7, 10, and 14-16 are pending. Claims 1, 10, 14 and 16 are amended. Claims 2, 6, 8, 9 and 11-13 are canceled.

Claim 1 is amended to recite that delete the term solvates and to recite compounds wherein R¹⁰ is H and R¹¹ is OH or ORA, RA being C₁₋₇ alkyl. Support for the amendment is found at least at page 28, line 30 to page 29, line 5 (describing the structure of suitable solvates) and page 12, lines 16-20 (setting forth that the R^A ether substituent can have a C₁₋₇ alkyl group). Claims 10 and 14 are amended to recite "a pharmaceutically acceptable salt" with support at least found in the originally filed claims. Claim 14 is also amended for clarity to specify that the compounds are used to treat an infection by gram-positive bacteria, with support at least found in the originally filed claim and at page 23, lines 6-12. Claim 16 is amended to delete the phrase "or pharmaceutically acceptable salts or solvates thereof." Support for the amendment is found through out the specification.

Rejections under 35 U.S.C. § 112, Second Paragraph

Claims 1, 3-5, 7, 10 and 14-16 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. These rejections are addressed as set forth below.

Claims 1, 10, 14 and 16 were rejected as indefinite for reciting "or pharmaceutically acceptable salts or solvates thereof." In the interest of furthering prosecution, and without acquiescing that the rejection has merit, this phrase has been deleted from claim 16. Claims 1, 10 and 14 have been amended to recite "or a pharmaceutically acceptable salt thereof" according to the Examiner's suggestion. Applicants reserve the right to pursue claims directed to solvates in a continuing application. Withdrawal of the rejection is requested.

The Examiner objected that the recitation of nitrogen or oxygen projection groups (which occurs in claim 16) was unclear because final products do not require protection. Claim 16 is amended to remove reference to "or pharmaceutically acceptable salts or solvates thereof" to clarify that the compounds are intermediates which may benefit from protection. Withdrawal of the rejection is requested.

Claim 14 was rejected for inconsistencies in the recitation of "bacterial infection" and a "gene based disease." Claim 14 is amended to clarify that the compounds are used to treat an infection by gram-positive bacteria. Withdrawal of the rejection is requested.

Rejections under 35 U.S.C. § 112, First Paragraph

Claims 1, 3-5, 7, 10 and 14-16 were rejected under 35 U.S.C. § 112, first paragraph as not being enabled for solvates of the compound of Formula I.

In the interest of furthering prosecution, and without acquiescing that the rejection has merit, Applicants have amended claims 1, 10, 14 and 16 to delete the term "solvates." Applicants reserve the right to pursue claims directed to solvates in a continuing application. Claim 1 is amended to recite compounds wherein R¹⁰ is H and R¹¹ is OH or ORA, RA being C₁₋₇ alkyl, which are solvate compounds that are described and enabled by the specification. See, for example, the paragraphs bridging page 28-29. Accordingly, withdrawal of the rejection is requested.

Rejections under § 35 U.S.C. § 103

Claims 1, 7, 10 and 14-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Thurston et al. (WO 93/18045). Thurston et al. is cited as teaching a genus of pyrrolobenzodiazepines that embraces the claimed compounds.

Applicants respectfully submit, as set forth in the prior response submitted June 23, 2008, which arguments are herein incorporated by reference, that the Office action has not set forth a *prima facie* case of obviousness.

The Examiner indicated that Applicants' prior arguments of superior and unexpected results would need to be shown in a side by side comparison in declaration form to be persuasive. Accordingly, Applicants have attached a declaration under 37 C.F.R. § 1.132 ("Declaration") by Dr. Howard, an inventor of the application. Since the Examiner's requirement for a declaration was indicated only in the final Office action, Applicants respectfully submit that the Declaration could not have been previously submitted. Entry of the Declaration is respectfully requested.

Dr. Howard avers that "[t]he compound claimed has better properties than those disclosed by Thurston et al. that would not be predicted by one of ordinary skill in the art."

Declaration, part 5. Accordingly, one of skill in the art would not predict that the claimed compounds would show such improved properties over the DNA generic compounds of Thurston et al.

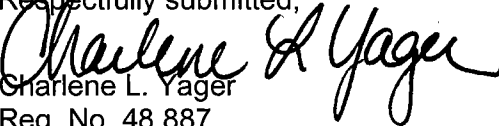
Dr. Howard further avers that "[f]or example, as disclosed in the specification of the Application at page 41, the claimed compound has an IC_{50} value in an assay using K562 human chronic myeloid leukemia cells of about 0.05 nanomolar. This IC_{50} value is superior and unexpected from the teachings of Thurston et al., which discloses an IC_{50} value in an assay using K562 cells of 10 nm for a compound in which the group linking the pyrrolobenzodiazepine moieties contains three carbons (example 6) compared to the five carbon linking group of the claimed compounds and an IC value of 0.5 micromolar for a compound (example 4) that differs from the claimed compound by having no substituents on the PBD C-ring." Declaration, part 5. Clearly, the claimed compounds have significantly superior properties from the compounds disclosed in Thurston et al. Moreover, as Dr. Howard avers, the superior properties discovered by Applicants were quite unexpected.

Applicants respectfully submit that the unpredictability of the art, combined with the surprising and unexpected superior properties of the claimed compounds, renders the claimed compounds non-obvious over the disclosure of Thurston et al. Withdrawal of the rejection is respectfully requested.

Conclusion

Applicants respectfully submit that the claims are in condition for allowance. Should the Examiner feel that any issues remain or wish to discuss anything further, the Examiner is invited to contact the undersigned at the number below.

Respectfully submitted,


Charlene L. Yager
Reg. No. 48,887

Michael Best & Friedrich LLP
One South Pinckney Street
P. O. Box 1806
Madison, WI 53701-1806
608.257.3501
065435-9082-US00